PT 95-29
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, OWNER OLYMPIC OIL LTD., LESSEE Applicant v. THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	Docket No.(s) 92-16-1169 PI No. 19-04-200-018 (Cook County) George H. Nafziger Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Edward P. Larkin, appeared on behalf of Olympic Oil Ltd. (hereinafter referred to as "Olympic").

SYNOPSIS: A hearing was held in this matter on March 14, 1995, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not the parcel here in issue and/or the improvements thereon, qualified for exemption from real estate tax for the 1992 assessment year.

Is the Metropolitan Water Reclamation District of Greater Chicago (hereinafter referred to as the "District"), a municipal corporation? Did the District own the parcel here in issue during the 1992 assessment year? Is said parcel a public ground? Was said parcel used exclusively for public purposes during 1992? Was notice of this request for exemption given to the municipality, school district, and junior college district, as required by 35 ILCS 205/119? Following the submission of all of the evidence and a review of the record, it is determined that the District is a municipal corporation. It is also determined that the District owned this parcel during 1992. In addition, it is determined that this parcel is

a public ground. It is further determined that said parcel was not used exclusively for public purposes during 1992. Finally, it is determined that the required notices were given, pursuant to 35 ILCS 205/119.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, was established by the admission in evidence of Department's Exhibits numbered 1 through 6C.

On June 18, 1993, the Board of Appeals of Cook County transmitted a Statement of Facts in Exemption Application, concerning the parcel here in issue and the improvements thereon, for the 1992 assessment year to the Department (Dept. Ex. No. 2). On June 3, 1994, the Department notified Olympic that it was denying the exemption of this parcel and the improvements thereon, for the 1992 assessment year (Dept. Ex. No. 3). On June 22, 1994, the attorney for Olympic requested a formal hearing in this matter (Dept. Ex. No. 4). The hearing held in this matter on March 14, 1995, was held pursuant to that request.

The Metropolitan Water Reclamation District Act, at 70 ILCS 2605/3 provides as follows:

> "Such sanitary district shall from the time of the first election held by it under this Act be construed in all courts to be a body corporate and politic...."

From an examination of the deeds in the record in this matter and the statements of the attorney for the District, I find that the District owned this parcel during the 1992 assessment year.

On September 5, 1940, the District entered into a twenty-five year ground lease of this parcel, to U. S. Industrial Chemicals, Inc. (hereinafter referred to as "U. S. Industrial"). This lease provided that U. S. Industrial would pay the taxes on this parcel. The lease obligated U. S. Industrial to build a dock in the main channel of the District to the District's specifications, and to back fill the main channel to the

District's specifications. The District, pursuant to this ground lease, maintains the right to repair and maintain its intercepter sewer, which runs along the edge of this parcel. In addition, U. S. Industrial agreed to submit its plans for building storage tanks and other structures on the parcel, to the Chief Engineer of the District for approval before constructing same. On July 31, 1951, U. S. Industrial assigned this ground lease to National Distillers Products Corporation (hereinafter referred to as "National Distillers"). On October 11, 1956, the District and National Distillers entered into a Supplemental Agreement, which among other things, extended the term of the lease for an additional forty years, expiring on September 30, 2005. On July 18, 1957, National Distillers assigned this amended ground lease to Mid-America Chemical Terminal, Inc. (hereinafter referred to as "Mid-America"). On September 15, 1983, DeMert & Dougherty, Inc., successor in interest to Mid-America, assigned the amended ground lease to Olympic. On September 15, 1983, the District entered into an amendment to the lease with Olympic. Also on September 15, 1983, DeMert & Dougherty, Inc. conveyed the buildings and other improvements on this parcel, to Olympic.

Olympic was incorporated on March 31, 1983, pursuant to the Business Corporation Act of Illinois.

During the 1992 assessment year, Olympic Oil owned a three-story building and at least 20 oil tanks, and necessary piping and appurtenances, all located on the parcel here in issue. For the 1992 assessment year, the assessed value of the land was $169,949.00, and the assessed value of the improvements was $163,049.00. For the 1993 assessment year, the valuation of the improvements was raised to $190,592.00, and the valuation of the land remained the same.

Subsequent to the Department's denial of exemption in this matter, dated June 3, 1994, Olympic sent notices of the filing of the request for

exemption in this matter to the taxing districts, on June 22, 1994.

1. Based on the foregoing, I find that the District is a municipal corporation.

2. The District, I find, owned the parcel here in issue during the 1992 assessment year.

3. Said parcel was leased during 1992, by the District to Olympic, a for-profit corporation, pursuant to a ground lease.

4. During 1992, I find that Olympic owned a three-story building and approximately 20 oil storage tanks and necessary piping and appurtenances, which were located on this parcel, and used by Olympic in the conduct of its for-profit business during that assessment year.

5. Finally, I find that on June 22, 1994, Olympic did send notices to the taxing districts of its filing of the Application for Exemption in this matter, pursuant to 35 ILCS 205/119.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

> "The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.9 (1992 State Bar Edition) exempts certain property from taxation in part as follows:

> "All market houses public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v.

University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The District is a municipal corporation. See People v. Nelson, 133 Ill. 565 (1890). The property of the District used exclusively for District purposes was held by the Illinois Supreme Court to come within the language of 35 ILCS 205/19.9, cited above. Sanitary District v. Hanberg, 226 Ill.480 (1907). The Illinois Supreme Court has also held that for property of the District to qualify for exemption, it must be, both in fact and in law, public grounds used exclusively for public purposes. See Sanitary District v. Hanberg, 226 Ill. 480 (1907); Sanitary District v. Carr, 304 Ill. 120 (1922); The People v. Sanitary District, 307 Ill. 24 (1923); and Metropolitan Sanitary Dist. v. Rosewell, 133 Ill.App.3d 153 (1st Dist. 1985).

The case of Metropolitan Sanitary Dist. v. Rosewell, 133 Ill.App.3d 153 (1st Dist. 1985) is distinguishable from the case here in issue. In that case, while the District had leased property bordering one of its main navigable channels for a period of fifty years, that property was crossed by numerous drainage ditches, pipes, drains, and other utilities of the District. In this case, there is one intercepter sewer on the parcel, which runs along one boundary of the parcel, and does not interfere with Olympic's for-profit corporate uses of this parcel. Also, in the Metropolitan Sanitary Dist. v. Rosewell, case the lessee had not placed any improvements on the property, which is clearly not the case here. In the Sanitary Dist. v. Carr case, where the Court, from the pleadings determined that the property was substantially used for purposes which were not public purposes, the Court held the property to be taxable.

From the facts in this case, it is clear that the District has

reserved to itself certain rights concerning its public use of this parcel, it is also clear that Olympic enjoys very substantial private, for-profit uses of this very same parcel. In the case of Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), the Supreme Court held that where property as a whole is used both for an exempt purpose and a nonexempt purpose, the property will qualify for exemption only if the former use is the primary use, and the latter use is merely incidental. Clearly, Olympic's use of this parcel was more than merely incidental.

In a letter from the Cook County Board of Appeals to the Department dated July 19, 1994 (Dept. Ex. No. 2M), it is stated that the parcel index number here in issue is a fee simple parcel number. Also, the tax bill in this matter (Dept. Ex. No. 2I) shows that this parcel is currently being assessed to Olympic. Mr. Larkin, attorney for Olympic, at the hearing stated that Olympic's purpose in filing the Request for Exemption in this matter, was to have the District's fee simple interest in this parcel found to be exempt, and a leasehold assessment placed against Olympic.

35 ILCS 205/26 (1992 State Bar Edition) provides in part as follows:

> "...when real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee as real estate." (Emphasis Supplied)

In this case, pursuant to 35 ILCS 205/19.9, the leasing by the District to Olympic makes the parcel taxable. Consequently, 35 ILCS 205/26 does not apply.

35 ILCS 205/27a (1992 State Bar Edition) provides in part as follows:

> "The owner of real property on January 1 in any year shall be liable for the taxes of that year,...."

Consequently, this parcel should be assessed to the District, not Olympic.

Concerning the Department's denial of exemption for lack of

jurisdiction based on Olympic's failure to comply with 35 ILCS 205/119 (1992 State Bar Edition), said provision reads in part as follows:

> "Upon filing of any application for an exemption which would reduce the assessed valuation of any real property by more than $100,000, other than a homestead exemption, the owner shall give timely notice of the application to any municipality, school district and community college district in which such property is situated. Such notice shall be given by mailing a copy of the application for exemption to any municipality, school district or community college district in which such property is situated. Failure of a municipality, school district or community college district to receive such notice shall not invalidate any exemption. The board shall give such municipalities, school districts and community college districts and the taxpayer an opportunity to be heard. In all such cases other than homestead exemptions, the board through its secretary shall prepare and forward to the Department a full and complete statement of all the facts in the case and shall forward a copy of such facts and material to the assessor. The Department shall then determine whether such property is or is not legally liable to taxation. It shall notify the board of appeals of its decision and the board shall correct the assessment accordingly, if necessary. The decision of the Department shall be a final Administrative Decision."

35 ILCS 205/119 (1992 State Bar Edition), while requiring that notice be given by mail, does not specify that certified or registered mail be used. Therefore, the statute does not envision that mailing is an issue as to which proof will be required.

The statute provides that failure of a municipality, school district, or community college district to "receive" a notice, does not invalidate an exemption. There can be no failure to receive where a notice is not sent. There can only be a failure to receive where it is presupposed that a notice was sent. Since no proof of mailing is required, however, there is no practical distinction between a failure to mail and a failure to receive. Thus, the failure to send a notice by mail should have the same effect as the failure to receive a notice which is alleged to have been mailed, but for which no proof of mailing is provided, consequently, the failure to send a notice should not invalidate an exemption.

Therefore, it appears that the foregoing provision cannot be

interpreted as being jurisdictional. Instead, it appears that said notice provision is directory, since failure to comply with said provision does not defeat the authority of the Board of Appeals to rule upon the petition and make a recommendation to the Department. See Andrews v. Foxworthy, 71 Ill. 2d 13 (1978); Glasco Electric Co. v. Department of Revenue, 86 Ill. 2d 346 (1981); and Moody's Investors Service v. Illinois Department of Revenue, 101 Ill. 2d 291 (1984).

In addition, Olympic did give the required notices after the Department's denial was issued, and before the hearing before the Department was held.

Based on the foregoing findings of fact and conclusions of law, I recommend that Cook County fee simple parcel index number 19-04-200-018 remain on the tax rolls for the 1992 assessment year, and that the tax bill for said parcel for 1992, be sent to the Metropolitan Water Reclamation District of Greater Chicago, which is the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

June , 1995